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IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS

In Re Patent Application of :
ORIANA SCHONEBERG :
Serial No.: 10/501,000 : Art Unit 3742
Filed: 07/06/2004 : Examiner Sang Y. Paik
For: **THERAPEUTIC DECORATIVE** :
OBJECT :

Mail Stop Appeal Brief-Patents
Commissioner for Patents
Alexandria, VA 22313-1450

SIR:

BRIEF OF APPELLANTS

This is an appeal from the Examiner of Art Unit 3472
refusing claims 1, 4-11 and 14-30. The claims on appeal are set
forth in the Appendix.

1. Real Party in Interest

The real party in interest is the Applicant, Oriana
Schoneberg.

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2. Related Appeals and Interferences

There are no related appeals or interferences.

3. Status of Claims:

Claims 1, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Hart (US 5,445,349). Claims 1 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Mandish (US 6,315,959). Claims 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Humphreys (US 5,233,768). Claims 1, 4, 7, 10,11 19 and 25-29 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Hunt (US 4,969,502) in view of Owens (US 5,591,221). Claims 5, 6 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt in view of Owens and further in view of Hyatt (US 6,329,644) and Hart. Claims 8, 9, 20 and 21 are rejected under 35 U.S.C. 103(a) in view of Hunt in view of Owens and further in view of Humphreys (US 5,233,768). Claim 18 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Hunt in view of Owens and further in view of Mandish.

4. Status of Amendments

A proposed Amendment After Final filed on February 10, 2006 has not been entered.

5. Summary of the Invention:

A therapeutic apparatus (50,62,67,70,71,75,78,79,40,44,45, 46,80,90,103,104,106,115,125,132,134,140,144,151,152,162, 166,175,181,191,187) includes a plurality of therapeutic devices (59,61,55,66,69,70,74, Figures 1A-14G,43,85,94,98,102,108,110, 118,121,122,128,145,146,149,153,161,170,167,177,183,189,192, 190), such as a vaporizer, a massage unit, heating or cooling units, all of which are camouflaged in a decorative object or in a clothing item or in a utilitarian object, such as a piece of furniture, all of which are worn or located adjacent a person who can obtain the therapeutic benefits from the items. A decorative object (50,67,40,80,90) can be shaped to be worn by a person and have a therapeutic device camouflaged therein so that the therapeutic object acts on the individual while the decorative object is being worn. The same applies to clothing (44,45,46,104,106,115,132,134,144,152,151,150,140) including a ladies purse (115) which can have a plurality of therapeutic devices therein, such as an electric massager or vaporizer or a

heating pack which can be held against a person without drawing attention to the person receiving the therapy. Therapeutic items can also be incorporated into furniture (71,162,163,164, 166,181,187), such as tables or beds, to provide therapeutic action through a vaporizer or the like while a person is sitting adjacent the furniture.

6. Issues

The issue presented as to claims 1, 5, 6, 22-24 and 30 is whether these claims meet the requirement of patentability under 35 U.S.C. 102(b).

The issue presented as to claims 1, 4-11, 14-21 and 25-29 is whether these claims meet the requirement of patentability under 35 U.S.C. 103(a).

7. Grouping of Claims

Claims 1 and 4-10 form one group of claims for a plurality of camouflaged therapeutic devices worn adjacent a person's body finally rejected under 35 U.S.C. 103. Claims 11 and 14-21 form a second group which has the camouflaged therapeutic devices in a soft sculpture worn on the person's body. Claims 22-24 form a third group having camouflaged therapeutic acupuncture nodules

mounted in clothing and positioned against a person's body, including acupressure nodules in the soles of shoes. Claims 25 and 26 forms a fourth group having headwear, such as a hat or cap, camouflaging a vaporizer. Claims 27 - 29 forms a fifth group having the therapeutic devices including an electric massager camouflaged in a ladies handbag. Claim 30 forms a six group having a plurality of therapeutic devices camouflaged in a piece of furniture. The rejected claims, however, do not stand or fall together and the arguments set forth herein present reasons as to why Appellant considers the rejected claims to be separately patentable.

8. Arguments

Claims 1,5,6 22-24 and 30 stand finally rejected under 35 U.S.C. 102 (b) under either the Hart patent or the Mandish patent or the Humphreys patent. Claims 1, 4-11, 14-21 and 25-29 stand finally rejected under 35 U.S.C. 103(a) on combinations formed using the Hunt patent with the Owens patent, and with the Hyatt patent and with the Hart patent and with the Humphreys patent and with the Mandish patent.

The referenced Hart patent teaches a wrist support system for supporting the wrist of a person performing activities, such

as typing, data entry, and calculating, among others, and is used to relieve physical stress occasioned by such activities. The apparatus is essentially a flexible container constructed of cloth which holds grains of uncooked rice. The particulate matter may be heated or cooled to apply the heat or cold to a user's wrist while the apparatus acts to support the wrist. This wrist support system does not teach the use of a plurality of therapeutic devices which includes a vaporizer for producing the therapeutic vapor adjacent a person and does not have camouflaging means for the plurality of therapeutic devices nor does it use a decorative soft sculpture shaped to be positioned adjacent a person. Claims 1, 5 and 6 are not anticipated by Hart because Hart does not have a plurality of therapeutic devices including a vaporizer nor camouflage concealing a plurality of therapeutic devices. Hart's rice is specifically for supporting the wrist and the cloth container is not camouflage but is as stated in the patent a container and no one skilled in the art of wrist supports would consider putting a vaporizing liquid in rice in a wrist support far away from the person's nose where to benefit from the vaporizing liquid would require the person to move his head and nose to the wrist support position while supporting the wrist on the keyboard

which would require moving and maintaining the entire body in an uncomfortable bent position.

The referenced Hunt patent is for a combined vibrator and heating apparatus which has different shapes to accommodate different portions of a human body, such as the back, chest, neck, wrist, arms and legs and which operates on a battery or regular 120v ac power source. The Hunt patent does not have a plurality of therapeutic devices which includes a vaporizer for producing a therapeutic vapor adjacent a person and does not camouflage or conceal a plurality of therapeutic devices so that a person can receive therapy in the presence of other individuals without drawing attention to the therapeutic action taking place. It also does not provide for a soft sculpture shaped to be positioned adjacent to a person and having a plurality of therapeutic devices therein attached to the decorative soft sculpture and which includes a vaporizer for producing therapeutic vapor. In addition, the Hunt patent, like the Hart patent, does not use a vaporizer which includes loose granular material which can be used for heating and cooling and simultaneously used as a vaporizer.

The Owens patent is a therapeutic pad used in footwear which has a liquid absorbent to prevent liquid leakage in the event

the sealed envelope of the pad is ruptured. The footwear of this therapeutic pad is used for applying heat or removing heat from particular body surface areas of the user to soothe muscles and joints. This patent suggests the use of a therapeutic pad and a foldable seat cushion and for use in connection with an electric vibrator with cylindrical therapeutic pad removed and in connection with a stuffed teddy bear with a therapeutic pad in the vest worn on the chest of the bear. Owens does not teach a therapeutic apparatus which has a plurality of therapeutic devices including a vaporizer for producing therapeutic vapors adjacent a person, which therapeutic devices are camouflaged to conceal the plurality of therapeutic devices while the plurality of therapeutic devices are being used adjacent an individual receiving therapy. It does provide for the use of a soft sculpture in the nature of a teddy bear not one which includes a plurality of therapeutic devices including a vaporizer for producing therapeutic vapors. It also does not suggest a clothing item for wearing by an individual having a plurality of acupuncture nodules, each of which nodules is located adjacent a selected known acupuncture point of the individual wearing the clothing. Owens also does not suggest the use of a plurality of therapeutic devices in a piece of furniture.

The Humphreys patent is a magnetotherapy insole for shoes and includes a method for applying a magnetic therapy to the feet and legs of a person while wearing a shoe. It consists of an insole insert for the shoe having three layers of material, one of which is a magnet material and the other two layers being a top cushion and bottom cushion. This patent illustrates the use of magnets which is suggested in one of the independent claims but does not suggest therapeutic clothing for wearing on the head of an individual having a camouflaged vaporizer attached thereto and positioned to direct the vapor adjacent an individual's nose. It also does not provide for a clothing item for wearing by an individual which has a plurality of acupressure nodules, each of which nodules being located adjacent a selected known acupuncture point of an individual wearing the clothing item to apply pressure to a plurality of acupressure points of an individual wearing the clothing item. It does illustrate the magnet suggested in claim 23 of the present application but not a clothing item or shoes having the plurality of acupressure nodules positioned in preselected known acupressure points. Claims 22-24 are not anticipated by Humphreys because Humphreys does not have a plurality of acupressure nodules with each nodule being located adjacent a

selected known acupuncture point of an individual to apply pressure to a plurality of acupressure points of the individual wearing the clothing item. Humphreys is specifically a magnetotherapy insole for shoes with the magnet strips being laid lengthwise and oriented around the north and south poles and has a plurality of protrusions for additional cushioning effects laid out uniformly without regard to acupressure points of an individual. These claims have only been rejected under 35 U.S.C. 102(b) and clearly are not anticipated by the Humphreys patent.

The Mandish patent shows a salt air freshener apparatus. A salt sculpture air freshener is formed of sodium chloride or salt composition material by casting or molding the item having a coating material thereover and mounting the salt sculpture to a base having an electric heater, such as an electric lamp for heating the coated salt material. The salt sculpture reduces the airborne microbiological agents in a room where the precast salt composite sculpture is heated to freshen the air in the room. The salt sculpture is, in effect, heating the salt and a coating covering the salt for producing a microbiological agent in the surrounding air. It does not teach a plurality of therapeutic devices including a vaporizer for producing

therapeutic vapors adjacent a person nor a camouflaged plurality of therapeutic devices which plurality of therapeutic devices are located adjacent an individual receiving therapy. It also does not teach a decorative soft sculpture shaped to be positioned adjacent to a person and having a plurality of therapeutic devices attached thereto and including a vaporizer for producing therapeutic vapors adjacent the person wearing the decorative soft sculpture. The Mandish patent is also not a therapeutic clothing apparatus for wearing by an individual having acupressure nodules. It is also not a piece of furniture having a plurality of therapeutic devices which includes a vaporizer for producing a therapeutic vapor. Claims 1 and 30 are not anticipated by Mandish because Mandish does not have a plurality of therapeutic devices nor camouflage concealing a plurality of therapeutic devices. Mandish also is not a piece of furniture as set forth in claim 30 having therapeutic means visually camouflaged from view but rather is a coating on a piece of sculpted salt in full view. Applicant's Attorney wrote the Mandish patent.

It is only fundamental that a valid reference is good for what it discloses and must show all or part of the invention for which a patent is sought, In re Stempel, Jr., 113 U.S.P.Q.

77 (CCPA 1977). These prior references do not show the present invention as claimed.

None of the cited references teach the use of a lady's purse having a plurality of therapeutic devices therein including an electric massager positioned for massaging an area of an individual's body in which that purse is being held thereagainst and none of the cited references teach all of the elements of any of the claims, as amended. It would be unobvious to combine the references, which combination still would not teach any of the individual claims. Each of the cited patents individually teach a therapeutic device and it would be unobvious to pick and choose among the different references to combine with the other references and, in any event, any such combination would require a total redesign and would not produce the present invention, as taught by the amended claims.

A reversal of the Examiner is believed to be in order for the following reasons.

1) Claims 22 through 24 claim a clothing item having a plurality of acupressure nodules, each of said nodules being located at a selected known acupressure point of the individual wearing the clothing item. This concept is especially applicable to shoes where acupressure nodules are continuously

pressed against the acupressure points of a person wearing the shoes. This concept is not shown in the cited references nor in the prior art. The Humphreys reference is cited under 35 U.S.C. 102(b) in connection with these claims and teaches a magnetotherapy insole for shoes having strips of magnetic material placed in the sole. It does provide a plurality of uniformly distributed protrusions as part of the cushioning to provide a massaging affect to the feet of the wearer but this in no way suggests the actual placing of acupressure nodules at selected acupressure pressure points of the individual wearing the clothing or shoes and this is not anticipated by the Humphreys patent. Anticipation under 35 U.S.C. 102(b) is the only rejection of this claim and requires the disclosure in a single prior reference of each element of the claim, W.L. Gore & Assocs. V. Garlock, 220 USPQ 303 (Fed. Cir. 1983). There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention, Scripps Clinic & Research Found. V. Genentech Inc., 18 USPQ 2nd 1001 (Fed. Cir. 1991)

2) Claim 30 claims a plurality of therapeutic devices attached to a piece of furniture. It includes a vaporizer for producing a vapor with a plurality of therapeutic devices being

camouflaged from view in the furniture. The Mandish patent teaches a salt air freshener apparatus and method specifically dealing with killing airborne microbiological agents and specifically with the use of salt to produce negative ions while coated with a silver colloidal solution. This claim is rejected only on 35 U.S.C. 102(b) as anticipated by Mandish. It does not teach "a plurality of therapeutic devices attached to said piece of furniture" nor a vaporizer concealed in a piece of furniture nor "said plurality of therapeutic devices being visually camouflaged from view" as taught by the claim. Anticipation under 35 U.S.C. 102(b) requires the disclosure in a single prior reference of each element of the claim, RCA Corp. v. Applied Digital Data Sys., Inc., 221 USPO 385 (Fed. Cir. 1984) and every element is not taught in the Mandish patent.

3) Claims 27 teaches a ladies purse having a plurality of therapeutic devices therein including an electric massager formed into the purse for massaging a person's body when the person holds the ladies purse against a portion of the body. Claims 28 and 29 also call for a heating pad and a vaporizer being incorporated into the purse. Nowhere has the prior art suggested the use of a ladies purse which incorporates an electric massager as one of a plurality of therapeutic devices

which can be activated by a person in public for massaging a sore or injured portion of a person's body nor the same purse having the heating and pad and vaporizer. Obviousness determination under 35 USC 103 must include consideration of the invention as a whole, including its structure, its properties, and the problem it solves, so that unobviousness of structure for its intended purpose is relevant to obviousness determination, In re Wright, 6USPQ2d, 1959, 1988.

4) Claims 25 and 26 are directed towards a clothing item worn on the head of an individual, and specifically towards a hat or cap which incorporates and camouflages a vaporizer therein positioned where vapors can be generated adjacent an individual's head and nose. Claim 26 further limits this to a hat having a brim having a passive vaporizer for producing the vapors adjacent the person's face and nose. This has not been taught or suggested by the prior art and advantageously allows a person to be exposed to predetermined healthy vapors while going about day to day activities without drawing attention to the use of the vaporizer. The cited Hunt patent teaches a vibrator/heating apparatus which can be attached to the head in one embodiment for vibrating the head while the Owens patent teaches a therapeutic pad for footwear which has a liquid

absorbent to prevent leakage but it would be unobvious to combine these patents and any combination still would have a camouflaged vaporizer positioned in a hat brim, near a person's nose, and having a passive vaporizer for vaporizing liquid as set forth in claim 26. The prior art must contain some teaching, suggestion or incentive to combine the individually known elements or features in such a manner as to result in the claimed invention. Carella v. Starlight Archery, 804 F.2d 135, 231 USPQ 644, 647 (Fed.Cir.1986).

5) Claims 11 and 14 through 21 are directed towards a decorative soft sculpture shaped to be positioned adjacent to a person and having a plurality of therapeutic devices attached to the decorative object adjacent the person wearing the decorative soft sculpture including a vaporizer for producing therapeutic vapors. The prior art does not teach the use of attaching a soft sculpture to a person in which the soft sculpture being worn by the person also has multiple therapeutic devices including a vaporizer for producing the therapeutic vapors adjacent the person wearing the soft sculpture. Further claims also provide for the soft sculpture to include a massage unit (Claim 14), a heating unit of loose granular materials (Claim 15), including flax seed (Claim 17), or including a

vaporizer having a heating element and a fan for blowing heated vapors adjacent the person from the soft sculpture (Claim 18) or the use of permanent magnets (Claim 20) and having a plurality of acupressure points formed in the decorative soft sculpture to apply pressure to predetermined portions of a person's body (Claim 21). The patent examiner bears the burden of establishing a prima facie case of obviousness when rejecting claims under 35 U.S.C. 103. The mere fact that the reference cited by the examiner may be modified does not allow the examiner to meet his or her burden absent a suggestion in the cited art of the desirability of the modification. In re Fritch, 23 U.S.P.Q. 2d 1780 (Fed. Cir. 1992).

6) Claim 1 and 4 through 10 provides for a plurality of therapeutic devices which includes a vaporizer producing therapeutic vapor adjacent a person and it had been proposed to amend this claim to have the vaporizer include a fan for directing the produced vapors adjacent to the person. The therapeutic device is camouflaged concealing the plurality of therapeutic devices and is worn by an individual receiving therapy from the therapeutic devices. Dependent claims 4 through 10 further specify the specific therapeutic devices. The prior art teaches therapeutic devices that are worn by individuals but

not ones that are camouflaged and worn by individuals and which include directing specific vapors from the camouflaged vaporizer and which also include other therapeutic devices. The present independent and dependent claims form a patentable combination which would be unobvious to a person of ordinary skill in the art, especially in the absence of a teaching reference. It is well settled that a claimed combination may be patentable whether it is composed of elements all new, partly new or all old. Rosemount, Inc. v. Beckman Instruments, Inc., 727 F.2d 1540, 221 USPQ 1, 7 (Fed. Cir. 1984).

9. An Appendix containing a copy of each of the claims appealed is attached hereto.

Conclusion

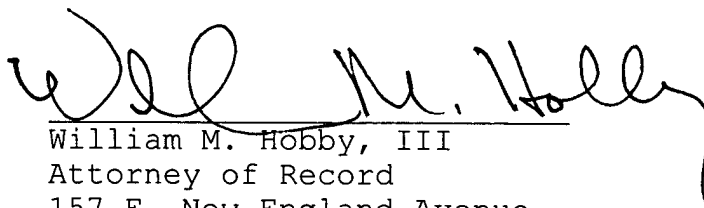
Applicant submits that all of the appealed claims in this application are patentable under 35 U.S.C. 103 and a reversal of the Examiner is believed to be in order.

This Brief and Appendix are enclosed in triplicate.

Fee

This application is on behalf of a small entity and a fee of \$250.00 is enclosed herewith.

Respectfully submitted,



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By: William M. Hobby III, Reg. #24,167

CLAIMS APPENDIX

1. A therapeutic apparatus comprising:

a plurality of therapeutic devices, including a vaporizer for producing therapeutic vapor adjacent a person;

therapeutic device camouflage concealing said plurality of therapeutic devices while said plurality of therapeutic devices are located adjacent an individual receiving therapy from at least one said therapeutic device whereby a person can receive therapy in the presence of other individuals without drawing attention to the therapeutic action taking place.

4. The therapeutic apparatus of claim 1 in which said plurality of therapeutic devices includes a massage unit for producing a massaging vibration adjacent a person.

5. The therapeutic apparatus of claim 1 in which said plurality of therapeutic devices includes heat storing material for storing and applying heat adjacent a person.

6. The therapeutic apparatus of claim 5 in which said heat storage material is a loose granular material which also forms a vaporizer when a vaporizing liquid is applied to the heated loose granular material.

7. The therapeutic apparatus of claim 1 in which said camouflage is shaped like a soft sculpture animal figure shaped to be attached to a person.

8. The therapeutic apparatus of claim 1 in which said plurality of therapeutic devices includes pressure points camouflaged in clothing and positioned to apply pressure to predetermined points of a body.

9. The therapeutic apparatus of claim 1 in which said plurality of therapeutic devices includes means for generating a bioelectromagnetic field for applying to a person's body.

10. The therapeutic apparatus of claim 1 in which said plurality of therapeutic devices includes frequency generating means for generating a predetermined frequency adjacent the body.

11. A decorative therapeutic apparatus comprising:
a decorative soft sculpture shaped to be positioned adjacent to a person;

a plurality of therapeutic devices attached to said decorative object adjacent a person wearing said decorative soft sculpture including a vaporizer for producing therapeutic vapors, said plurality of therapeutic devices being camouflaged by said decorative object whereby a plurality of camouflaged therapeutic devices can provide a therapeutic action to a person wearing said decorative object.

14. The decorative therapeutic apparatus of claim 11 in which said plurality of therapeutic devices includes a massage unit for producing a massaging vibration adjacent a person.

15. The decorative therapeutic apparatus of claim 11 in which said plurality of therapeutic devices includes heating means of loose granular material.

16. The decorative therapeutic apparatus of claim 15 in which said loose granular material includes flax seeds.

17. The decorative therapeutic apparatus of claim 11 in which said plurality of therapeutic devices includes heating means of loose granular material which also forms the vaporizer when a vaporizing liquid is applied to the heated loose granular material.

18. The decorative therapeutic apparatus of claim 11 in which said plurality of therapeutic devices includes a vaporizer having a heating element and a fan for blowing heated vaporized liquid out of said decorative soft sculpture.

19. The decorative therapeutic apparatus of claim 11 in which said decorative soft sculpture is an animal figure shaped to be attached to a person.

20. The decorative therapeutic apparatus of claim 11 in which said plurality of therapeutic devices includes permanent magnets mounted in said decorative object adjacent a person's body wearing said decorative object.

21. The decorative therapeutic apparatus of claim 11 in which said plurality of therapeutic devices includes pressure points placed in said decorative soft sculpture and positioned to apply pressure to predetermined points of a person's body.

22. A therapeutic clothing apparatus comprising:
a clothing item for wearing by an individual;
a plurality of acupressure nodules, each said nodule being located adjacent a selected known acupuncture point of an individual wearing said clothing item to apply pressure to a plurality of acupressure points of an individual wearing said clothing item.

23. The therapeutic clothing apparatus of claim 22 including a plurality of magnets located in said clothing item.

24. The therapeutic clothing apparatus of claim 22 in which said clothing item is a shoe having a plurality of acupressure nodules positioned on the shoe insole adjacent selected known acupuncture points.

25. A therapeutic clothing apparatus comprising:
a clothing item for wearing on the head of an individual;
a camouflaged vaporizer attached to said clothing item
positioned to direct a vapor adjacent an individual whereby an
individual is exposed to a vapor while wearing said clothing item.

26. The therapeutic clothing apparatus of claim 25 in which
said clothing item is a hat having a brim having a passive vaporizer
made of an vaporizing liquid support material formed in said brim
to hold a vaporizing liquid for vaporizing adjacent a person's face
and nose.

27. A therapeutic purse comprising:

a ladies purse having a plurality of therapeutic devices therein, said plurality of therapeutic devices including an electric massager positioned for massaging an area of an individual's body when held thereagainst.

28. The therapeutic purse in accordance with claim 27 in which said plurality of therapeutic devices includes a heating pad positioned for heating an area of an individual's body when held thereagainst.

29. The therapeutic purse in accordance with claim 28 in which said plurality of therapeutic devices includes a vaporizer for vaporizing a liquid adjacent said purse when activated.

30. A therapeutic piece of furniture comprising:
a piece of furniture;

a plurality of therapeutic devices attached to said piece of furniture and including a vaporizer for producing a therapeutic vapor, said plurality of therapeutic devices being visually camouflaged from view whereby a plurality of therapeutic devices can provide therapeutic action for persons adjacent the furniture.